



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/852,867

05/10/2001

Elbie D. Wallace JR.

5149

25768

7590

04/17/2008

F. RHETT BROCKINGTON

10613 KENNEL LANE

CHARLOTTE, NC 28277

EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT

PAPER NUMBER

3689

MAIL DATE

DELIVERY MODE

04/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/852,867

## Applicant(s)

WALLACE, ELBIE D.

## Examiner

Dennis Ruhl

## Art Unit

3689

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 6, 16-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 16-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

Art Unit: 3689

Applicant's response of 1/21/08 has been entered. Currently claims 1,2,6,16-19,21,22 are pending. The examiner will address applicant's remarks at the end of this office action.

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1,2,6,16-19,21,22, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

For independent claims 1,21,22, applicant has claimed "by a potential renter against at least one lease warranty criteria". With respect to the language of "*at least one*" lease warranty criteria (also in claim 6), the specification as originally filed never disclosed the fact that only one of the 3 criteria was required. The specification as originally filed stated that all 3 criteria were to be looked at, not just one. The language of "at least one" never appears in conjunction with the claimed criteria. This is new matter.

Art Unit: 3689

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,2,6,16,18,21,22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weatherly et al. (6049784).

For claims 1,18,21,22, Weatherly discloses a lease guarantor that will provide a lease warranty to a landlord in the event that a renter has defaulted on their rent. Column 4, lines 25-33 disclose that the renter must qualify for the lease warranty by satisfying guarantor set criteria. Qualifying the renter against the set criteria is an assessment as to the risk of default that the renter poses and gives the renter a chance to rent a desired space. This satisfies part a). Weatherly discloses a credit check and an employment check as claimed. This satisfies both of ii and iii of part a). The examiner notes that the claim as amended only requires one of the 3 types of criteria and Weatherly actually discloses two of them, namely a credit check and employment check. Column 4, lines 66-column 5, line 9 discloses the warranty and how the payments can be structured. With respect to the recitation of "calculating the cost of a warranted agreement" (part b), see column 4, lines 34-65 where it is disclosed that a computer is used to check the potential renter and the computer will "determine which service product the financial institution will offer the tenant." Also disclosed is that "the computer system will ...determine which product the financial institution will offer to the tenants.". The computer system is disclosed as determining the cost of the lease

agreement, which is a cost of the warranted lease of the space. The service product can be anything from a one month guarantee to "at least three months". This is the cost that the guarantor will have to pay in the event of a default and represents the cost of the warranted lease. The examiner also notes that column 2, lines 15-20 disclose that a management fee is also paid to the guarantor and this is inherently part of the service product that the computer system determines is appropriate for the potential renter. The lease is entered into once the agreement is accepted, see column 5, lines 10-14 as an example.

Not disclosed is that a list of landlords seeking to enter into a warranted lease agreement is generated and where the list is used by a potential renter to select a desired space.

See column 4, lines 11-17 where it is disclosed that an advertising campaign would be undertaken to attract landlords to use the guarantor service. Also see column 8, lines 4-9 where it is also disclosed that prior to setting up any accounts, advertising is initiated and direct calling is undertaken to recruit landlords and tenants to the system of Weatherly. Not specifically disclosed is that a list of landlords is generated and stored in a database (a mere collection of data, can be in paper form), where the list is used by a renter to select a desired space. It would have been obvious to one of ordinary skill in the art at the time the invention was made to store list of landlords in a database as claimed because it is disclosed that an advertising campaign is used to attract and recruit landlords to the service. One of ordinary skill in the art would find it obvious to have some database files pertaining to the customers of the service such as landlords

that you targeted with the advertising campaign and that have been recruited to utilize the service. One would naturally find it obvious to generate a list of landlords that have been recruited so that you have a list of clients that you are going to do business with. One of ordinary skill in the art would not take the time to recruit and call landlords and then not store or document them in a database of some form. One would clearly want to document and store the identify of any landlords that have expressed a desire to do business with the service of Weatherly so that you know who your clients are. One would also assume that some landlords would be repeat customers and storing information about your customers in a database is clearly within the understanding and motivation of one of ordinary skill in the art. Generating a list of landlords is considered to be obvious to one of ordinary skill in the art. With respect to the generated list being used by the renter to select a space, the examiner again notes that the advertising campaign is disclosed as being used to recruit tenants to the service of Weatherly. When this is done and a prospective tenant expresses an interest in using the service of Weatherly to guarantee their lease, it would have been obvious to one of ordinary skill in the art to inform the prospective tenant which landlords are participating in their service, so the tenant can contact only those landlords that are participating in the service that Weatherly provides, so they can then obtain a guaranteed lease agreement. Weatherly clearly discloses that tenants are also recruited and advertised to. When a tenant is recruited to use the service of Weatherly and wants to have their lease guaranteed, it just makes sense to give them a list of participating landlords so they can choose a landlord that is already agreed to participate in the services that Weatherly provides.

This would have been obvious to one of ordinary skill in the art and is simply putting a potential tenant in touch with the landlords that are participating in the services that Weatherly provides.

For claim 2, Weatherly discloses that with respect to the credit check, any indication of fraud is reason for denial. See column 4, lines 34-40. A credit check is a check for bills/debts not paid because if you do not pay a bill or debt, the failure to pay is reported to a credit agency so that in the future another lender can be made aware of the previous failure to pay a bill/debt. This satisfies the limitation of denying the renter if a past due utility bill is found. Applicant should take notice that claim 2 is not further limiting the fact that only one of i, ii, or iii is required to reject the claim. Simply having a credit check done satisfies what is claimed because of the language of "at least one".

For claim 6, applicant has claimed that the renter will be qualified regardless of non-payment of rent, or student loans, or medical bills, or lack of credit, or bankruptcy, or auto repossession. This is not disclosed by Weatherly. The specific criteria used to assess a particular prospective renter are directly related to the level of risk that the guarantor is willing to accept. Weatherly even discloses in column 1, lines 59-end, that the renter is evaluated to "determine the acceptability of the level of financial risk associated with the potential lessee". Based on this fact, it would have been obvious to one of ordinary skill in the art who was willing to accept a high level of financial risk associated with a potential renter to approve the renter even if they have non-payment of rent or student loans or medical bills or lack of credit, or bankruptcy, or auto repossession. These features are criteria that would be of interest to one of ordinary

skill in the art who leases housing. One willing to accept a very high level of risk would find it obvious to qualify a renter as claimed, regardless of their past credit history, etc.. This would be obvious to one of ordinary skill and is dependent on the level of risk one is willing to accept.

For claim 16, it is not disclosed that default is when the renter has an ejectment conviction. The examiner interprets this to be an eviction of the tenant. One of ordinary skill in the art would have found it obvious to consider the tenant in default only after an ejectment conviction because this is the point in time where a legal authority has decided the issue and found grounds for eviction. The tenant has then been afforded some due process rights. This is also something that one of ordinary skill in the art would find negotiable and adjustable in the contract for the lease warranty itself. One could set the contract as defining default after one rent payment is not received on time if one wanted to or one could set forth that default is after two late rent payments. This would be an obvious choice that one of ordinary skill in the art would recognize as being set as one desired.

5. Claims 17,19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weatherly et al. (6049784) in view of ATS, Inc. web site.

For claim 17, not disclosed is that the application is completed using an Internet web site. Weatherly discloses that the landlord submits data to the guarantor using a communication link 16 that connects computers 10 and 12. Weatherly does recognize and disclose electronic submission of data to the guarantor for purposes of performing a



renter screening. ATS discloses a web site where information on prospective tenants is submitted for review. ATS teaches that applications for leases are taken by using a web site on the Internet and that this is an easy to use and efficient manner of performing the method of tenant screening. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the renter to submit an application to the guarantor by using a web site on the Internet as disclosed by ATS because it is a very easy to use and efficient manner of communication. The quote from Richard De Boer states "I found your web site on the Web and have been using you ever since. I have been very happy ever since". Bryan Osborne is quoted as saying "The online reports save a lot of paperwork.". Sue Schlea states "ATS has a quick response time.". One of ordinary skill in the art would have found it obvious to use a web site for a renter to fill out an application for lease.

For claim 19, Weatherly discloses that the landlord is notified of a denial or acceptance of a tenant or of multiple tenants (when more than one are submitted). See column 4, lines 34-65. Also disclosed in Weatherly is that a communication link 16 is used to connect landlord computer 10 to guarantor computer 12 for purposes of data submission concerning the prospective renter(s). In view of this, one of ordinary skill in the art at the time the invention was made would have found it obvious to notify the landlord (in the database) via the Internet (such as by email) of a renter (or renters) being qualified because the Internet is a very well known communication link for computers around the world. Weatherly teaches electronic communication between computers via a communication link and from this teaching the use of the Internet

(email) is considered a very obvious choice to one of ordinary skill in the art.

Additionally, and as an additional interpretation, ATS discloses the use of the Internet for notifying the landlords of the results of a tenant check. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the Internet in Weatherly to notify the landlords of a tenant being qualified as disclosed by ATS.

6. Applicant's arguments filed 1/21/08 have been fully considered but they are not persuasive.

With respect to the new matter issues and the 112,1<sup>st</sup> rejection, the arguments are not persuasive. Original claim 1 never recited "at least one" and to argue that this was implied is not persuasive. It must have been disclosed in the original claims or in the specification as originally filed, which it was not. With respect to claim 6, this claim makes no mention of and does not address the issue of having just one of the 3 warranty criteria required. In fact claim 6 originally stated "wherein the renter is qualified against the lease warranty criteria", which includes all three because claim 1 defined the criteria as being 3 of them and not just one. With respect to the reliance upon figure 2, when a renter is "qualified" they are judged against all 3 criteria and not just one. Only one criteria would be looked at when it was first decided at the first criteria that the renter cannot be qualified. Then the entire process stops. To qualify the renter, as shown in figure 2, all 3 criteria must be looked at; otherwise, they are never qualified. Applicant's argument is not persuasive and the rejection will be maintained.

With respect to the traversal of Weatherly, a lot of the arguments are made based on what is not claimed and what is claimed in Weatherly. This is not persuasive and has nothing to do with what is being claimed and what is disclosed in Weatherly. Applicant is using the transitional phrase of "comprising", which allows for additional elements to be in the prior art for a rejection to be proper. Arguing aspects of Weatherly that are not claimed is not persuasive. Arguing what the instant invention does not do is not addressing what is claimed and comparing this to what is disclosed in the prior art. With respect to the generating of the list of landlords, this has been addressed in the current rejection of record which applicant is referred to. The argument for claim 20 is noted but this claim has been canceled so the argument is moot. To the extent that what was claimed in claim 20 has been added to the independent claims in an enhanced format, this has been addressed by the current rejection of record.

For claims 6,16, and 18, applicant seems to be arguing that because the word "risk" is not in the instant specification, then Weatherly is not applicable because there is risk involved, or because the examiner has used the word risk in the rejection. The examiner disagrees and notes that the aspect of risk is inherently involved in the instant invention. That is why certain criteria is being looked at to decide if the renter can be qualified. As far as the level of risk one is willing to accept, this is something that is well within the understanding of one of ordinary skill in the art. In Weatherly a renter is given a chance to rent, just like the instant claims recite. The arguments are not persuasive.

For claim 19, the argument that there was no such group in May 2001 is noted, but is not really clear. Is applicant alleging that some prior art does not have a usable

and good date to be prior art? The issue of a database and a list of landlords is addressed in the current rejection of record.

For claim 21, when the landlord agrees to use the service of Weatherly, the service has been sold. The argument is not persuasive.

The examiner notes that applicant has stated that the inventor is prepared to offer affidavits if need be. The examiner takes the position that this should have been done if applicant felt a need to do so. Now that the application will be under a FINAL rejection, the submission of any evidence after FINAL is not timely and will not be considered.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/  
Primary Examiner, Art Unit 3689

